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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,384	10/20/2003	William M. Scott	6215.36004	4157

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EXAMINER

KATCHEVES, BASIL S

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,384

Applicant(s)

SCOTT, WILLIAM M.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 21 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 15-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,645,342. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Regarding claim 15, claim 15 is a substantial duplicate of claim 1 of '342 but does not disclose the form as a tube. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the shape of a tube, as tube forms are commonly used for molding columns or holes in concrete foundations.

Claim 16 is a substantial duplicate of claim 2 of '342.

Claim 17 is a substantial duplicate of claim 3 of '342.

Claim 18 is a substantial duplicate of claim 4 of '342.

Regarding claim 19, '342 does not claim secondary slabs anchored together. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add a second slab anchored to the first, as slabs are routinely added together for use in such structures as bridges, building foundations, etc.

Claim 20 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,645,342 in view of U.S. Patent No. 2,560,952 to Henderson et al.

Regarding claim 20, claim 1 of '342 claims the the helically coiled member used in forming concrete but does not claim an anchor inserted into the threads of the concrete. Henderson discloses inserting an anchor into threaded concrete (fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '342 by inserting an anchor, as disclosed by Henderson, in order to secure additional equipment or structure to the concrete.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,751,196 to Cannon et al.

Regarding claim 1, Cannon discloses a tubular form made from helically coiled strands (fig. 1) capable of use as a concrete form, the bonds between strands inherently breakable if pulled apart.

Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,079,912 to Haydock.

Regarding claim 8, Haydock discloses a tubular member formed from plastic with two opposite ends, comprising a helical coil (fig. 4), wherein the sidewalls have a thickness inherently enabling them to be pulled apart.

Regarding claim 9, Haydock discloses the radius of the space between coils as being less than the radius of the coils from the inner surface (fig. 4: approximate to where 34 and 40 point).

Regarding claim 10, Haydock discloses the form as being located close to a concrete surface (column 2, lines 16-18).

Regarding claim 11, Haydock discloses a support (fig. 4: 42) in contact with the member.

Regarding claim 13, Haydock discloses a mandrel (fig. 1: 14) inserted into the member and coupled to a wall (fig. 1: 16).

Regarding claim 14, Haydock discloses a plate (fig. 1: see plate between 14 and 16) for coupling the mandrel to the wall.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,751,196 to Cannon et al. in view of U.S. Patent No. 3,276,176 to Jonsson et al.

Regarding claim 7, Cannon does not disclose one end of the tube as being closed. Jonsson discloses one end of the form as being capped (fig. 4: 11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cannon by capping the end of the form, as disclosed by Jonsson, in order to prevent the access of liquids or soil.

Claims 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,751,196 to Cannon et al. in view of U.S. Patent No. 4,079,912 to Haydock.

Regarding claim 3, Cannon does not disclose a cap partially covering one end of the tube. Haydock discloses a helical tubular concrete form having a partially capped (fig. 4: 42) end. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cannon by adding the caps, as disclosed by Haydock, in order to avoid unwanted concrete from entering the form.

Regarding claims 2, 4 and 6, Cannon does not disclose the form as being made of plastic. Haydock discloses the use of plastics to make the form (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cannon by using plastics, as disclosed by Haydock, in order to better protect the form from liquids.

Regarding claim 5, Haydock discloses the use of a gripping means (fig. 4: 44).

Claims 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,079,912 to Haydock in view of U.S. Patent no. 3,276,176 to Jonsson et al.

Regarding claim 12, Haydock does not disclose the form as being supported with external wires. Jonsson discloses a plastic concrete form having external wires (fig. 4: 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haydock by adding external support wires, as disclosed by Jonsson, in order to better secure the form while concrete is being poured.

Claim Objections

Claims 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to concrete forms in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK


Basil Katcheves

4/18/05

Examiner AU 3635